

APPENDIX B
COOPERATING AGENCY AGREEMENTS
AND
REPRESENTATIVES

COOPERATING AGENCY REPRESENTATIVES

Ten agencies signed cooperating agency agreements to assist NPS with the development of the Winter Use Supplemental Environmental Impact Statement. Each agency designated a representative with authority to speak in its behalf. The cooperating agencies and their designated representatives are listed below.

State Representatives

Carl Wilgus, Representing the State of Idaho
Todd O'hair, Representing the State of Montana
John Keck, Representing, the State of Wyoming

County Representatives

Tamra Cikaitoga, Representing Fremont County, Idaho
William Murdock, Representing Gallatin County, Montana
Ellen Woodbury, Representing Park County, Montana
Timothy Morrison, Representing Park County, Wyoming
William Paddleford, Representing Teton County, Wyoming
Paul R. Kruse, Representing Fremont County, Idaho (also representing Park and Gallatin counties, Montana, Park and Teton counties, Wyoming)

Federal Agencies

Rebecca Aus, Representing the U.S. Forest Service
Phillip Strobel, Representing the Environmental Protection Agency

COOPERATING AGENCY AGREEMENT

The following pages provide the content of an agreement defining the cooperating relationship between the State of Wyoming and the National Park Service. All cooperating agencies signed agreements that are the same in terms of content. The actual signed agreements are located in the administrative record for the SEIS.

**AGREEMENT BETWEEN THE NATIONAL PARK SERVICE AND THE STATE OF
WYOMING FOR THE WINTER VISITOR USE SUPPLEMENTAL ENVIRONMENTAL
IMPACT STATEMENT FOR YELLOWSTONE AND GRAND TETON NATIONAL
PARKS AND THE JOHN D. ROCKEFELLER, JR., MEMORIAL PARKWAY**

I. Introduction

The National Park Service (NPS or "lead agency") and the State of Wyoming ("Wyoming" or "State") have agreed to work cooperatively to prepare the Supplemental Environmental Impact Statement ("SEIS") for the Winter Use Plan for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway (the Parks). The NPS, as lead agency, must assure compliance of the winter use plan with the National Environmental Policy Act ("NEPA") and other federal statutes, regulations, and Executive Orders.

In 1998 the NPS and the State entered into a cooperating agency agreement similar to this one for the development of the draft and final environmental impact statements for the winter visitor use plans for the Parks. In November, 2000, the National Park Service issued its record of decision on those documents, finding that the continued use of recreational snowmobiles in the Parks impaired park resources and values and, as a consequence of that finding, decided to eliminate that use from the Parks by the winter of 2003-04. Wyoming intervened in a lawsuit challenging that decision. Pursuant to the Agreement reached in that case, the United States agreed to develop a supplemental environmental impact statement (SEIS) to further the purposes of NEPA (ref. 40 CFR 1502.9). The purposes of NEPA include: declaring a national policy to encourage productive and enjoyable harmony between humans and their environment; promoting efforts to prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans; and enriching the understanding of the ecological systems and natural resources important to the Nation (ref. 42 USC 4321). The purposes of NEPA also include "twin aims" of NEPA, which are to require an agency to consider every significant aspect of the environment of a proposed action and to ensure that the agency will inform the public that it has considered environmental concerns in its decision-making process.

The state understands that NPS plans to ask the U.S. Forest Service; U.S. Environmental Protection Agency; States of Idaho and Montana; Fremont County, Idaho; Gallatin and Park Counties, Montana; and Park and Teton Counties, Wyoming, to act as cooperating agencies. NPS will enter into cooperating agency agreements with all entities agreeing to be cooperating agencies and will attach in an appendix all such cooperating agency agreements still in effect when NPS issues the supplemental environmental impact statement. NPS will seek cooperating agency agreements with those agencies that are similar in substance to this Cooperating Agency Agreement. The Agreement states that NPS will issue a record of decision and final rule, if applicable, by November 15, 2002. Consequently, NPS must move forward with the SEIS process without delay. If NPS and the entities listed above are unable to reach agreement on their cooperating agency agreements by July 17, 2001, those entities will not become cooperating agencies.

The parties acknowledge that the preparation of the SEIS and Winter Visitor Use Plan is subject to the Agreement that commits the National Park Service to produce the document and a decision on the schedule set out above. By entering into the Agreement and this Cooperating Agency Agreement the State agrees to use its best efforts to assure compliance with that schedule and to produce timely documents that meet the requirements of NEPA. The parties to the Cooperating Agency Agreement acknowledge that the National Park Service developed the schedule for completing the SEIS (Exhibit A) using its best professional judgment of the time necessary to complete certain steps in the NEPA process and reach the settlement goal of a decision before the beginning of the winter use season for 2002-03. The NPS agrees that it will use its best efforts to afford the State the number of days provided in that schedule to complete the State's responsibilities.

II. Purpose

This Cooperating Agency Agreement clarifies and defines the relationships and duties of the lead and cooperating agency in the SEIS.

III. Authority

The authority of the NPS to participate in this Cooperating Agency Agreement is provided by the NPS Organic Act, 16 USC 1 et seq., the General Authorities Act, 16 USC 1a-1 et. seq., the Yellowstone National Park Act, 16 USC 21 et seq., the Grand Teton National Park Act, 16 USC 406d-1 et seq., the John D. Rockefeller, Jr., Memorial Parkway Act, Pub. L. 92-404; and NEPA, 42 USC 4321 et seq.

The authority of the State of Wyoming to participate in this process is provided by Wyoming Statute 9-2-207 and NEPA.

IV. Agency Designee

One week after the execution of this Cooperating Agency Agreement, the State will designate a liaison to act as the point of contact for the SEIS. The State may change its liaison at any time by providing written notice to the NPS.

V. Lead Agency Responsibilities

As lead agency, the NPS will:

- a) Be responsible for the preparation of, quality of and content of the draft and final SEIS;
- b) Inform the public and decisionmakers of the potential direct, indirect, and cumulative impacts of the alternatives that are reviewed in the SEIS process as well as about potential means to mitigate those impacts;

- c) Identify opportunities to avoid, minimize, or compensate for significant adverse effects due to federal actions;
- d) In the SEIS, clearly identify and acknowledge the roles and responsibilities of the State and its specific responsibilities in participating as a cooperating agency;
- e) Provide to the State for review the internal draft SEIS by September 30, 2001, and provide to the State for review the internal final SEIS by July 15, 2002;
- f) Meet with the cooperating agencies by July 27, 2001, to present the alternative(s) for consideration in the SEIS, and to receive input on the alternative(s);
- g) Allow the State to provide by August 14, 2001, pertinent new information that is available by that date regarding winter visitor use in the three parks and to participate in the development of the SEIS, through cooperating agency meetings and conference calls and through submission of analyses and comments during the internal review process and public comment periods provided for herein;
- h) Assure compliance with all applicable laws;
- i) Make the final decision on the content of all public documents;
- j) Participate in routine conference calls on the status of the project. The responsibility for arranging the calls will rotate among the lead and cooperating agencies. The lead and participating cooperating agencies will determine the frequency of the status calls at the first meeting of the lead and cooperating agencies.
- k) Establish a schedule of cooperating agency meetings based on the information contained in Exhibit A. The lead agency will remind the cooperating agencies of scheduled cooperating agency meetings at least two weeks before the meeting is to occur. Upon request of the State or another cooperating agency, the lead agency will meet with the State and other cooperating agencies upon reasonable notice;
- l) At the State's expense, make available to the State public comments and other information reviewed or analyzed by the Lead Agency (excluding documents that may be withheld subject to any privilege) during the course of the SEIS process. In no event, however, will NPS withhold such information from the State on grounds that payment has not been made;
- m) Inform the State of all schedule changes that could affect its input to the document or ability to provide timely review of the document;
- n) Make the final decisions contained in the Record of Decision and, if applicable, the Notice of Final Rulemaking;

o) Use to the maximum extent possible, consistent with its responsibility as lead agency, the environmental analyses and proposals of the State in its capacity as a cooperating agency.

VI. Cooperating Agency Responsibilities

The general responsibilities of the State, as a cooperating agency, include:

- a) Participating in meetings, conferences, and reviews for the purpose of preparing the SEIS, resolving issues associated with the winter visitor use plan, and responding to public comments. The State also will participate in the routine status conference calls described above in Part V. j.;
- b) Devoting staff resources sufficient to provide technical assistance and advice to fulfill its role as a cooperating agency in accordance with the schedule set forth in Exhibit A;
- c) With the comments on the internal draft SEIS, providing to the lead agency documented information on possible conflicts between the alternative in the draft SEIS and the objectives of current State-approved land use plans, policies, and controls within the State's jurisdiction;
- d) Funding its own expenses associated with its participation in the SEIS process including expenses in providing information to the State. The State agrees to remit payment promptly to the NPS for expenses related to providing information to the State; and
- e) Provide written comments to NPS on the internal draft SEIS four weeks after receiving that document for review and providing written comments to NPS on the internal final SEIS three weeks after receiving that document for review; If the State submits its comments late, the lead agency may not be able to incorporate them into the draft or final SEIS.

VII. Cooperating agency meetings

Cooperating agency meetings will be held throughout the process, subject to the following conditions:

- a) Cooperating agency meetings will be chaired by the lead agency liaison. These meetings will be working meetings at which the lead and cooperating agencies will resolve issues related to the NEPA process, using a facilitator, if appropriate, paid for by the party requesting facilitation. Except when the interest of individual privacy outweigh the interest of public disclosure, the meetings will be open to the public. The lead agency will consider requests from a cooperating agency to close all or a portion of a meeting. To the extent practicable, the designated liaison or duly appointed substitute from the State will attend each cooperating agency meeting.

b) Cooperating Agencies will be expected to provide input and analyses on issues related to the alternative(s) under consideration during the course of the cooperating agency meetings. In addition to other issues considered by the Lead Agency, the Lead Agency will, with the analyses and input of the Cooperating Agencies, address the following impact topics as they relate to the alternative(s) under consideration: visitor access and circulation, wildlife, emissions, air and water quality, and socioeconomics.

b) As needed, the cooperating agency liaisons will hold conference calls to evaluate project progress and discuss processes, dates, needs, impact analysis, and other topics.

c) On a rotating basis, the lead agency or a cooperating agency will prepare a summary of the conclusion of calls and meetings and forward the summary to the participants for comments. The participants will return comments to the coordinating agency for that meeting or call within ten calendar days of receipt of the summary. The coordinating agency then will forward edited summaries to each participant and an additional copy to the lead agency to retain for the administrative record.

The agencies agree that any correspondence related to the subject of this Cooperating Agency Agreement will be sent to and received by the addressee agency before any distribution of its contents to any other party.

Agencies will evaluate internal review information for sufficiency using the standards of the NEPA and CEQ regulations.

The agencies will strive to produce a clearly written concise document, that accurately references all supporting materials. The agencies will use technical support documents to the extent practicable.

Except as required by court order or ruling, no release of any predecisional working documents will be made to the public other than through an approved Freedom of Information Act or comparable process, or the lead agency dissemination of materials as an approved part of the NEPA process.

VIII. Resolution of Disputes

NPS is responsible for all substantive decisions involving the draft and final SEIS and Winter Visitor Use Plans and, thus, is the final decision maker for disputes that may arise in the process. For disputes involving differing interpretations of information, NPS agrees to consider different interpretations if such perspectives are supported by sufficient and credible data (as determined by the NPS). The NPS will document for the administrative record the nature of the dispute and attempted resolution. For other disputes, the parties will use their best efforts to resolve the issue in a manner agreeable to the applicable parties. If the issue cannot be resolved, NPS will be the final decision-maker. The agencies agree that, once such disputes are resolved, they will not be revisited without the consent of the majority of the cooperating agencies

and the NPS. The State, however, may comment on all issues related to the SEIS, including those in dispute, through the normal NEPA process.

IX. Implementation and Termination

This Cooperating Agency Agreement will become effective on the date of the last signature. This Cooperating Agency Agreement may be amended as agreed by both parties. The NPS may terminate this Cooperating Agency Agreement at any time by providing written notice of the termination to Wyoming. NPS does not anticipate the terminating this Cooperating Agency Agreement unless actions of the State would prevent compliance with the compliance schedule in the Agreement or if the State fails to participate as a cooperating agency. The State may, at any time, terminate its participation in this Cooperating Agency Agreement by providing written notice to the NPS. If not terminated sooner, this Cooperating Agency Agreement will terminate when the Record of Decision is published in the Federal Register..

If the State's liaison fails to attend and participate in two consecutive cooperative agency meetings, the State will be deemed as having relinquished its role as a cooperating agency. The NPS, thereafter, in its sole discretion, may use or not use information submitted by the State after the effective date of such relinquishment. The NPS need not consider any information submitted by the State after the deadlines set forth in this Cooperating Agency Agreement or the Agreement.

Nothing in this Cooperating Agency Agreement will abridge or amend the authorities and responsibilities of the federal agencies, the states, and the counties on any matter under their respective jurisdictions.

Nothing in this Cooperating Agency Agreement may be construed to require either of the parties to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341) or any state law.

Wyoming and the NPS do not waive their sovereign immunity by entering into this Cooperating Agency Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Cooperating Agency Agreement.

The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Cooperating Agency Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Cooperating Agency Agreement shall operate only between the parties to this Cooperating Agency Agreement and shall inure solely to the benefit of the parties to this Cooperating Agency Agreement. The provisions of this Cooperating Agency Agreement are intended only to assist the parties in determining and performing their obligations under this Cooperating Agency Agreement.

X. Amendment

This Cooperating Agency Agreement may be amended upon written agreement executed by both parties. In the event that amendments to the schedule imposed by the Agreement are altered by stipulation of the parties, the dates and deadlines herein shall be correspondingly amended as necessary to conform to the requirements of any such modification to the Agreement.

The parties hereto have executed this Cooperating Agency Agreement as of the date shown below.

FOR YELLOWSTONE NATIONAL PARK

Date_____,2001

FOR GRAND TETON NATIONAL PARK

Date _____, 2001

FOR STATE OF WYOMING

Date_____, 2001

EXHIBIT A to Cooperating Agency Agreement

Scheduling of Tasks and Interim Products - no technical teams

Produce SEIS, Decision and a Rule Change (if necessary)

Contact invited cooperating agencies and schedule meeting	6/26/01
Notice of Intent to Prepare an SEIS sent to Federal Register	7/9/01
Final agreements with CA's due	7/17/01
Meeting with CA's to discuss alternative for SEIS	7/27/01*
CA's provide any pertinent new information	8/14/01
Provide Draft SEIS to CA's for internal review	9/30/01
End review, begin final edit of Draft SEIS	10/30/01
Complete publish ready Draft SEIS and post on the Web	1/21/02
Publication/Distribution of Draft SEIS and NOA. Publication of Proposed Rule.	3/15/02
Comment Period ends on DSEIS and Proposed Rule.	5/15/02
Response to comments on Draft SEIS complete and incorporated into Final SEIS. Begin internal and CA review.	7/15/02
Internal review and CA review complete	8/5/02
Final edits to Final SEIS incorporated	9/13/02
Publication/Distribution of Final SEIS and NOA	10/15/02
Issuance of Record of Decision and Final Rule	11/15/02
Final Rule effective date	12/15/02

*No later than

